IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 31370 of 2006(H)

PETITIONER:

M.MUNEER,
MINOR, AGED 13 YEARS,
EDATHITTA VADAKKATHIL, ELIPPAKULAM P.O.,
VALLIKUNNAM, REP. BY HIS MOTHER AND GUARDIAN
RAHIANATH.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS:

1. STATE OF KERALA,
REP. BY SECRETARY TO THE GOVERNMENT IN THE
DEPARTMENT OF GENERAL EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. ASSISTANT EDUCATIONAL OFFICER,
KAYAMKULAM.

3. HEADMISTRESS, U.P.S.ELIPPAKULAM,
ELIPPAKULAM P.O., ALAPPUZHA DISTRICT.

4. MANAGER,
U.P.S.ELIPPAKULAM,
ELIPPAKULAM P.O., ALAPPUZHA DISTRICT.

R1 & R2 BY GOVT. PLEADER (SMT. M. R. SREELATHA)

R3 BY ADV. SRI.R.RAJASEKHARAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C). NO. 31370 OF 2006 H

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF APPLICATION FOR TRANSFER CERTIFICATE IN THE REQUISITE FORM.

EXT.P2 TRUE COPY OF LETTER DATED 13.10.2006 ISSUED BY 3RD RESPONDENT TO THE MOTHER OF PETITIONER.

EXT.P3 TRUE COPY OF PETITION DATED 19.10.2006 SUBMITTED BY THE MOTHER OF PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF ORDER NO.F 6044/06 DATED 27.10.2006 ISSUED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF LETTER DATED 9.11.2006 SENT BY THE MOTHER OF PETITIONER TO THE 3RD RESPONDENT.

EXT.P6 TRUE COPY OF RECEIPT EVIDENCING DESPATCH OF EXHIBIT P5.

EXT.P7 ORIGINAL OF THE LETTER NO.121/06 DATED 13.11.2006 RECEIVED BY PETITIONER FROM THE THIRD RESPONDENT.

EXT.P8 ORIGINAL POSTAL COVER IN WHICH EXHIBIT P7 WAS ENCLOSED.

RESPONDENTS' EXHIBITS:

EXT.R3A TRUE COPY OF THE REPLY FROM THE THIRD RESPONDENT TO THE PETITIONER.

// TRUE COPY//

PS TO JUDGE

K. M. JOSEPH, J.

W.P.C. NO. 31370 OF 2006 H

Dated this the 19th January, 2007

JUDGMENT

Case of petitioner, in brief, is as follows:

Petitioner is a student of VIIth Standard in the U.P.School, Elippakulam. He was suspended from 18.9.2006 on false allegation that he committed theft of 395 books. According to petitioner, he was questioned by the teachers in the School including the Headmistress and on the basis of the complaint made by third respondent, Headmistress, Police Officers had questioned the petitioner on various days and the said enquiry unequivocally proved the innocence of petitioner and they were satisfied that the petitioner has not committed the alleged theft. Petitioner's mother made Ext.P1 request for T.C. which was rejected by Ext.P2. Petitioner's mother made Ext.P3 petition before second respondent AEO and by Ext.P4 the Headmistress was directed to issue T.C. To the petitioner subject to the Rules in existence. Grievance of petitioner is that in spite of Ext.P4

order, the Manager is not giving T.C. Prayer is to grant T.C. To petitioner and to take follow up action on the basis of Ext.P4.

2. A Counter Affidavit is filed by third respondent, Headmistress. Therein, the stand taken is that there was an enquiry and the Enquiry Report is produced under a Memo by counsel. Their case is that amount is due towards loss of the books.

3. I heard Shri George Varghese Perumpallikuttiyil, learned counsel appearing for the petitioner, Shri R. Rajasekharan Pillai appearing for third respondent, besides the learned Government Pleader. Learned counsel for petitioner would contend that even a perusal of the Enquiry Report would show that the case of theft of the books set up is highly improbable. Counsel for third respondent would, however, contend that this Court under Article 226 of the Constitution may be ill-equipped to go into such questions. Ext.P4 was not preceded by any hearing in favour of third respondent. Learned Government Pleader was asked to get instructions as to whether

the third respondent was heard before Ext.P4 was issued. Learned Government Pleader on instructions submits that, in fact, the third respondent was not afforded an opportunity of being heard. In fact, under Rule 20 of Chapter VI KER an Appeal lies against the HM refusing or delaying to give the T.C.. The very connotation of the word "Appeal" signifies a quasi-judicial proceeding and an order in an Appeal can be passed only after hearing the affected party. Counsel for petitioner, of course, pointed out that contrary to the claim for payment of Rs.10,000/= raised by third respondent, a perusal of the Enquiry Report produced would show that the value of the books comes to only Rs.3,360/=. Counsel for third respondent also would submit that the value of the books will come to only Rs.3,360/=.He would submit that on payment of the same T.C. Can be released.

4. Counsel submitted that the petitioner and third respondent will appear before second respondent AEO and the AEO may conduct an enquiry in the matter and take a decision,

as a proceeding under Rule 20 of Chapter VI KER. Accordingly, the Writ Petition is disposed of as follows:

Petitioner or/and his representative and third respondent or/and her representative shall be present before second respondent on 24.1.2007 at 11 A.M. Second respondent will proceed to consider the matter and take a decision in accordance with law. In view of the urgency expressed by petitioner, a decision will be taken in accordance with law within ten days from 24.1.2007.

K. M. JOSEPH, JUDGE

kbk.